

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Hebert	Team: Squad #2	CCRB Case #: 201805355	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/14/2018 7:30 PM	Location of Incident: Hawthorne Street and Nostrand Avenue; 71st Precinct stationhouse	Precinct: 71	18 Mo. SOL 12/14/2019	EO SOL 12/14/2019	
Date/Time CV Reported Tue, 07/03/2018 4:32 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 07/03/2018 4:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Michael Gonzalez	5947	943313	071 PCT
2. LT William Diab	00000	940125	071 PCT
3. An officer			

Officer(s)	Allegation	Investigator Recommendation
A.DTS Michael Gonzalez	Force: At Hawthorne Street and Nostrand Avenue in Brooklyn, Detective Michael Gonzalez used physical force against § 87(2)(b)	
B.LT William Diab	Force: At Hawthorne Street and Nostrand Avenue in Brooklyn, Lieutenant William Diab used physical force against § 87(2)(b)	
C.LT William Diab	Abuse: At Hawthorne Street and Nostrand Avenue in Brooklyn, Lieutenant William Diab searched § 87(2)(b)	
D. An officer	Abuse: At the 71st Precinct stationhouse, an officer threatened to arrest § 87(2)(b)	

## Case Summary

On July 3, 2018, § 87(2)(b) called the CCRB to file this complaint.

On June 14, 2018, at approximately 7:30 p.m., § 87(2)(b) was standing in a group of approximately eight to fifteen individuals on the southwest corner of Hawthorne Street and Nostrand Avenue in Brooklyn. Detective Michael Gonzalez and Lieutenant William Diab, both of the 71<sup>st</sup> Precinct at the time, approached the corner in an unmarked police vehicle and observed § 87(2)(b). Detective Gonzalez and Lieutenant Diab exited their vehicle and approached § 87(2)(b) who proceeded to run. When they reached § 87(2)(b), Detective Gonzalez and Lieutenant Diab used physical force against § 87(2)(b) (**Allegations A and B – Force – Physical Force**, § 87(2)(g)). Lieutenant Diab allegedly searched § 87(2)(b) (**Allegation C – Abuse of Authority – Search**, § 87(2)(g)) and arrested him for criminal possession of marijuana, criminal possession of a weapon, tampering with evidence, resisting arrest, obstructing governmental administration, and criminal use of drug paraphernalia (Board Review 10). Detective Gonzalez and Lieutenant Diab brought § 87(2)(b) to the 71<sup>st</sup> Precinct stationhouse. While in the prisoner holding cell area of the stationhouse, an unidentified officer allegedly told § 87(2)(b) “If I see you on that block again, I’m going to arrest you.” (**Allegation D – Abuse of Authority – Threat of Arrest**, § 87(2)(g)). § 87(2)(b) requested medical attention and was taken to § 87(2)(b).

Video evidence of this incident, consisting of a cell phone video that was recorded by an individual whose name § 87(2)(b) refused to provide, was provided to the CCRB by § 87(2)(b) (Board Review 01). Video evidence of this incident was also provided to the CCRB by the NYPD. The video was recorded on Detective Gonzalez’s body-worn camera and starts after Detective Gonzalez and Lieutenant Diab have placed § 87(2)(b) in their police vehicle (Board Review 02). Relevant portions of the videos are embedded in the relevant sections below.

## Findings and Recommendations

**Allegation (A) Force: At Hawthorne Street and Nostrand Avenue in Brooklyn, Detective Michael Gonzalez used physical force against § 87(2)(b)**

**Allegation (B) Force: At Hawthorne Street and Nostrand Avenue in Brooklyn, Lieutenant Diab used physical force against § 87(2)(b)**

§ 87(2)(b) was interviewed at the CCRB on July 13, 2018. Detective Gonzalez was interviewed at the CCRB on August 9, 2018. Lieutenant Diab was interviewed at the CCRB on August 14, 2018. Police Officer Thomas Demark of the 71<sup>st</sup> Precinct was interviewed at the CCRB on September 18, 2018.

It is undisputed that § 87(2)(b) was standing on the sidewalk with a group of unidentified individuals when Detective Gonzalez and Lieutenant Diab pulled up beside the group in an unmarked car. § 87(2)(b) and the officers looked at each other from a few feet away. As the officers exited the vehicle, § 87(2)(b) ran. Detective Gonzalez and Lieutenant Diab chased after § 87(2)(b) and, when they caught up to him, engaged in a physical struggle with § 87(2)(b) as they attempted to place him in handcuffs.

Both Detective Gonzalez and Lieutenant Diab stated that their attention was first drawn to the group of individuals by the odor of burning marijuana. According to Detective Gonzalez, when he drove up to the group, he observed § 87(2)(b) holding a small clear plastic bag of what he determined, from appearance and from his experience, to be marijuana in his hand. It was in regards to this initial observation that he chased and arrested § 87(2)(b). Lieutenant Diab stated that his attention was specifically drawn to § 87(2)(b) only when Detective Gonzalez pointed to § 87(2)(b) who was already walking away from them, and said, “CPM, CPM” (Criminal Possession of Marijuana). § 87(2)(b) denied having had marijuana in his hand. He stated that he only “speed-walked” away from the officers because he assumed they were going to tell the group he had been with to disperse and he wanted to preempt this by voluntarily walking away.

§ 87(2)(b) stated that Lieutenant Diab and Detective Gonzalez approached him at the same time. Lieutenant Diab grabbed one of § 87(2)(b) arms. In response, § 87(2)(b) pulled his arm away, backed away to get out of Lieutenant Diab’s grasp, and asked why he was arresting him. Lieutenant Diab began to try to grab for both of § 87(2)(b) arms, ultimately grabbing his right arm and “jerking” it behind his back as he placed a handcuff on his right wrist. This “jerking” caused an injury to § 87(2)(b) right shoulder. With a handcuff on one of his wrists, § 87(2)(b) “struggled” in an unspecified manner in an attempt to prevent Detective Gonzalez from handcuffing the other wrist. Lieutenant Diab attempted to lift § 87(2)(b) off of his feet by grabbing both of his legs below the knee and then turning his body sideways. § 87(2)(b) “wrestled” with the officers in an attempt to stay upright. Lieutenant Diab lifted § 87(2)(b) feet off the ground a “couple” times, but § 87(2)(b) continually resisted these efforts. Lieutenant Diab and Detective Gonzalez also attempted to “press” § 87(2)(b) on the ground (which § 87(2)(b) also described as the officers “tackling” him and “throwing him around”) as § 87(2)(b) continued to “fight” their efforts. Detective Gonzalez and Lieutenant Diab almost had § 87(2)(b) on the ground at one point, but § 87(2)(b) slipped his leg from Lieutenant Diab’s grasp and stood up. § 87(2)(b) made contact with the ground at least once (an unspecified number of times), and § 87(2)(b) felt pain in his lower back as a result of making contact with the concrete sidewalk.

Detective Gonzalez stated that when Lieutenant Diab caught up to § 87(2)(b) told him to stop, and attempted to grab him, § 87(2)(b) pushed Lieutenant Diab’s hand away. Detective Gonzalez reached § 87(2)(b) and Lieutenant Diab and grabbed one of § 87(2)(b) hands while Lieutenant Diab grabbed the other. As Detective Gonzalez grabbed § 87(2)(b) hand, his intentions were to place § 87(2)(b) under arrest for possession of marijuana based on having personally observed what he believed to be marijuana in § 87(2)(b) hands immediately prior. During this process, § 87(2)(b) was moving both his hands in a forward motion multiple times as Detective Gonzalez attempted to pull his hand behind his back. Detective Gonzalez was “not sure” whether § 87(2)(b) made contact with the ground, although he stated during his CCRB interview that “they” were “pretty low.”

Detective Gonzalez sustained a laceration to his fingers in the process of attempting to handcuff § 87(2)(b) although he did not know how this occurred. As a result of the struggle, Lieutenant Diab also sustained an injury to his hand, the nature of which Detective Gonzalez could not recall during his CCRB interview.

Detective Gonzalez prepared TRI Report # § 87(2)(b) in regard to this incident in which he stated that officers used a forcible takedown on § 87(2)(b) (Board Review 08). The TRI Report states that force was used by officers and against officers, and that it resulted in injury to one or more officers. It states that § 87(2)(b) was suspected of using drugs. The force against MOS was “wrestling/grappling,” while officers were attempting to “apprehend/control” § 87(2)(b). The injuries sustained by one or more officers were laceration(s) requiring sutures. The force used by officers was a “forcible takedown” and “grappling,” for self-defense, defense of other officers, and because the subject was armed with a weapon. The type of injury sustained by § 87(2)(b) is noted a complaint of substantial pain to his back. The injury was “unintentionally self-inflicted” and was not sustained by intentional or unintentional action by officers or non-officers.

Lieutenant Diab stated that when he extended his hand outward to prevent § 87(2)(b) from continuing to walk away from him, § 87(2)(b) used both his hands to grab both Lieutenant Diab’s hands and try to push them downward and away from himself. During this action, § 87(2)(b) cut one of Lieutenant Diab’s hands “a little bit” due to his fingernail ripping his skin. Lieutenant Diab told § 87(2)(b) he was under arrest and to “give him” his hands. § 87(2)(b) “flailed” his hands to avoid being handcuffed and tried to get away, and a struggle ensued.

During the struggle, Lieutenant Diab grabbed § 87(2)(b) though Lieutenant Diab could not recall during his CCRB interview where on § 87(2)(b) body he grabbed. The struggle then “went to the floor.” Lieutenant Diab did not know during his CCRB interview whether it was himself or Detective Gonzalez who may have taken § 87(2)(b) to the ground.

Cell phone video footage of this incident, which is embedded below, starts with officers already in the process of attempting to handcuff § 87(2)(b) right arm appears to not be handcuffed. The video shows Detective Gonzalez pulling on § 87(2)(b) arms while Lieutenant Diab pulls on § 87(2)(b) arms, feet, and lower legs and pushes on § 87(2)(b) chest. Throughout the video, § 87(2)(b) moves his body in multiple ways to avoid the officers’ grasp, which includes attempting to pull his arms and legs from their grasp, twisting his body in different directions, and bracing his body against the ground as officers attempt to pull him in the direction of their police vehicle. At one point, § 87(2)(b) knees both become visible on the ground but it is not clear how exactly his knees landed on the ground because the struggle is completely out of frame as this occurs.



201805355\_20181026\_1108\_DM.mp4

§ 87(2)(b) medical records from the § 87(2)(b) (Privileged Documents) state that § 87(2)(b) was ultimately diagnosed with acute pain of the right shoulder and unspecified acute low back pain. X-rays of his lumbar spine performed at the hospital found no fractures or subluxations, no slippage or stress fractures in the spine, and mild straightening of the lumbar lordosis which may be secondary to muscle spasm. X-rays of his right shoulder performed at the hospital found no acute fracture or dislocation.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody (Board Review 03).

§ 87(2)(b), § 87(2)(g)

**Allegation (C) Abuse of Authority: At Hawthorne Street and Nostrand Avenue in Brooklyn, Lieutenant Diab searched** § 87(2)(b)

§ 87(2)(b) stated that as the struggle began, Lieutenant Diab reached his hand inside § 87(2)(b) right front pants pocket and then removed his hand without removing anything from the pocket. Later during his interview, § 87(2)(b) stated that Lieutenant Diab actually “very quickly” inserted a hand inside each of § 87(2)(b) pockets (without specifying which pockets to which he was referring) and then removed his hand without removing anything from his pockets.

Lieutenant Diab stated that, at the point that § 87(2)(b) initially pushed his hands downward and away from him, Lieutenant Diab had not reached toward § 87(2)(b) waistband, reached his hands inside § 87(2)(b) pockets, or conduct any sort of frisk or search at any point before this action. During the subsequent struggle, Lieutenant Diab and Detective Gonzalez never reached into § 87(2)(b) pockets, grabbed his waistband, or looked under his clothing.

Detective Gonzalez stated that neither he nor Lieutenant Diab entered § 87(2)(b) pockets during the incident. Detective Gonzalez stated that he may have frisked § 87(2)(b) after he was handcuffed because he usually frisks individuals after they are handcuffed.

NYPD Patrol Guide Procedures 208-02 and 208-03 state that, prior to removing a prisoner to a stationhouse, officers should immediately frisk and search the prisoner for weapons, evidence, and contraband (Board Review 04). In *People v. Valenzuela*, 226 A.D.2d 154 (1996), the court ruled that officers may search a person incident to an arrest even up to several minutes before they are formally arrested (Board Review 09).

§ 87(2)(b), § 87(2)(g)

**Allegation (D) Abuse of Authority: At the 71<sup>st</sup> Precinct stationhouse, an officer threatened to arrest** § 87(2)(b)

§ 87(2)(b) described the officer who threatened to arrest him as an approximately 6’1” or taller white male with orange-red hair in his early 30s who was big and “chubby” and had blemishes on his face that looked like acne scars and who was wearing a blue police uniform.

Using the Prisoner Holding Pen Roster, the Interrupted Patrol Log, and the Command Log, several male officers were identified as potentially being present in the 71<sup>st</sup> Precinct stationhouse

during the time where § 87(2)(b) was held there.

Several attempts to contact § 87(2)(b) by phone and by mail were made in order to schedule a photo viewing for officer identification. § 87(2)(b) did not respond to any of these contact attempts.

The officer who most closely approximated § 87(2)(b) description, Police Officer Demark, was interviewed at the CCRB. Police Officer Demark denied recognizing § 87(2)(b) name or photo, and denied having had an interaction of the nature alleged by § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 05)
- Detective Michael Gonzalez has been a member of service for 11 years, and has been a subject in 35 allegations in 18 prior CCRB complaints.
  - In Case # 201212490, Detective Gonzalez was the subject of a substantiated stop allegation. The Board recommended a Command Discipline. The NYPD took no disciplinary action due to the expiration of the statute of limitation. § 87(2)(g)
- Lieutenant William Diab has been a member of service for 12 years, and has been a subject in 37 allegations in 14 prior CCRB complaints, and is a subject in a concurrent case, Case # 201805446, which is pending investigation.
  - In Case # 200800389, Lieutenant Diab was cited for other misconduct for providing a false official statement to the CCRB, and he was the subject of a substantiated physical force allegation and a substantiated discourteous action allegation. The Board recommended charges. The NYPD's disposition was a negotiated guilty plea resulting in forfeiture of 35 vacation days.
  - In Case # 201507839, Lieutenant Diab was the subject of a substantiated stop allegation where the Board's recommendation and NYPD's disposition were both Formalized Training. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On October 24, 2018, an inquiry was sent to the Comptroller's Office of the City of New York to determine whether a Notice of Claim was filed for this incident. The inquiry results will be added to the case file upon receipt (Board Review 06).

- § 87(2)(b) [Redacted]  
[Redacted]  
[Redacted]
- § 87(2)(b) [Redacted]  
[Redacted]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date